Twitter Thread by Charlie Savage



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The National Security Agency has just released an important set of rules and procedures for electronic surveillance by the DOD (of which NSA is a

It is a big-deal doc but it also appears to be more a housekeeping update of the previous one rather something that makes major substantive changes, unless I'm missing something, so my current plan is to tweet for specialists rather than write a NYT article for general readers./2

These procedures govern, at a 30,000-foot level, DOD/NSA surveillance that is authorized by Executive Order 12333 because it uses techniques that fall outside the sort of national-security wiretapping that the Foreign Intelligence Surveillance Act (FISA) regulates. /3

FISA covers collection inside the US from a wire of coms w/ at least one end on domestic soil. So this is for all the other stuff, like collection abroad, certain satellite interceptions, & warrantless bulk collection of foreign-to-foreign coms as they transit the US network./4

The previous procedures date back to 1988 and were signed by then-AG Edwin Meese and then-deputy secretary of defense William Taft. (They were released in 2014 as part of the Snowden fallout.)/5
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The 1988 version had been created to deal with the revolution in communications caused by the transition to fiberoptic network technology. (For more, see the secret post-FISA history of US surveillance law/policy/tech in Chapter 5 of my book "Power Wars.") /6

4. Transit Authority

In 1984, federal antitrust regulators broke up the Ma Bell telephone monopoly. Its long-lines division, which operated long distance and international phone calls, became AT&T Communications. It eventually had to compete with other network operators, like MCI and UUnet. But AT&T remained a dominant player in running equipment that made the communications network function. Among other things, it leased space on its lines to other phone companies to resell to their customers, who likely did not realize they were still using AT&T lines. In 1985, the NSA launched a corporate partnership program with the new AT&T, code-named Fairview.[15]

Meanwhile, in the mid-1980s, fiber-optic lines — bundles of super-thin glass tubes through which information is carried in pulses of light — emerged as a new method to transmit information over long distances, displacing copper coaxial lines and communications satellites.

The first transatlantic fiber-optic cable became operational in late 1988 and the first transpacific one in 1989.[16] Both were joint projects of international consortiums. AT&T was the American partner and oper-

The 1988 Meese-Taft rules were called the “Classified Annex” to DOD Manual 5240.01. This new version is less censored & is called the “Redacted Annex” – in part bc some classified stuff, e.g. transit authority, appears to have been pushed off into a different implementing doc. /7

The new version was signed by Bill Barr and Mark Esper. It is getting pushed out at the end of the Trump administration, as often happens with things officials have been working for years and want to wrap it up before they walked out the door./8

However, as I understand it, this update is not Trumpy. It is something civil servants have been working on since the Obama admin and that just ran into a lot of delays. Here is what Glenn Gerstell, who was the NSA’s general counsel until recently, emailed me: /9

This isn't a political development at all. Rather, these new rules are the result of a years-long effort by career civil servants in the intelligence community and departments of Justice and Defense to update a surveillance handbook that's over three decades old. During those decades, technology and our society's expectations about privacy and civil liberty evolved a great deal. In a deliberately transparent and public way, this new rulebook addresses that evolution by locking in place some important privacy safeguards – such as limiting the kinds of searches NSA can do in its databases in protecting Americans.

Minor mystery solved: In Sept, out of the blue, Trump issued a directive "clarifying" that the NSA could hunt for coms of Americans being held hostage abroad. Turns out that was bc in finalizing this, DOJ worried that this longstanding practice lacked explicit authorization./10

SUBJECT: Authority of the Intelligence Community to Collect Certain Intelligence Regarding United States Persons Held Captive Outside the United States

As provided in Presidential Policy Directive-30 of June 24, 2015 (U.S. Nationals Taken Hostage Abroad and Personnel Recovery Efforts), "[t]he United States is committed to achieving the safe and rapid recovery of United States nationals taken hostage outside the United States" and will "leverage appropriate intelligence support to pursue diplomatic, military, and law enforcement actions" to achieve that end. Moreover, the Intelligence Community (IC), as defined in section 3.5(h) of Executive Order 12333 of December 4, 1981 (United States Intelligence Activities), as amended, has long collected intelligence concerning the identity, safety, and recovery of United States persons reasonably believed to be held captive outside the United States by a foreign power, an international terrorist organization, or other non-United States persons.

I hereby authorize and direct the IC to continue collecting such intelligence, consistent with applicable laws, Executive Orders, and Presidential Directives. In furtherance thereof, I authorize the IC to collect intelligence concerning the identity, safety, and recovery of United States persons reasonably believed to be held captive outside the United States by a foreign power, an international terrorist organization, or other non-United States persons by directing an

But the diffs between the old & new rules seem to be largely about codifying changes since 1988 (creation of ODNI, FISA Amendments Act), adding discussion of existing training, & codifying practices we've knew about since Snowden, like contact chaining thru US person metadata./11

That’s what I got for now./12